

AMENDED IN ASSEMBLY MARCH 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2437

Introduced by Assembly Member Ting

February 19, 2016

An act to ~~amend Section 6330 of~~ add Sections 7401.1 and 7401.2 to the Business and Professions Code, and to add Section 238.6 to, and to add Part 10.5 (commencing with Section 2268) to Division 2 of, the Labor Code, relating to ~~employment~~, nail care establishments, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2437, as amended, Ting. ~~Division of Occupational Safety and Health; jurisdiction. Nail care establishments; training; wage violations.~~

(1) The Barbering and Cosmetology Act provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology. The act requires the licensure of any person, firm, or corporation operating an establishment engaged in a practice regulated by the board, as specified, and requires a licensed establishment to comply with various requirements. A violation of the Barbering and Cosmetology Act is generally a misdemeanor.

Existing law prohibits an employer from continuing to conduct business in this state, as specified, if a final judgment against that employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a specified period of time after the time to appeal has expired and no appeal is pending, except as specified.

This bill would require the State Board of Barbering and Cosmetology to deny the renewal of a license to an establishment that provides nail care services if that establishment is conducting business in violation of the above provision regarding final judgments arising from an employer's nonpayment of wages for work performed in this state, and would require the board to verify with the Labor Commissioner that such an establishment is not conducting business in violation of those provisions. The bill would also require the Labor Commissioner to notify the board if such an establishment is conducting business in violation of those provisions. The bill would authorize such an establishment to provide evidence to the board that it is not conducting business in violation of those provisions.

(2) Existing law creates the Division of Labor Standards Enforcement within the Department of Industrial Relations, and vests the division with the general duty of enforcing labor laws, including those relating to wage claims and employer retaliation.

This bill would require an establishment, which provides nail care services and is required to be licensed as an establishment under the Barbering and Cosmetology Act, to register with the division and receive specified training regarding workplace rights and wage and hour laws, including, but not limited to, overtime compensation, and would also require the establishment to arrange for the training to be provided to its employees. The bill would require the division to provide that training to such an establishment and its employees. The bill would authorize the division to contract with nonprofit vendors to perform that training and would require the division to consider certain factors when approving a nonprofit vendor, including that the vendor has familiarity with the labor laws to be discussed during the training. The bill would authorize the division to charge a fee to each nail care establishment, not to exceed the reasonable regulatory cost of providing the training, and would require that fee to be deposited into the Nail Care Establishment Training Fund, which would be created by this bill. The bill would continuously appropriate the money in that fund solely for the purposes of providing the required training. The bill would also define various terms for these purposes.

~~Existing law permits the Occupational Safety and Health Standards Board within the Department of Industrial Relations to adopt occupational health and safety standards to protect the welfare of employees. The Division of Occupational Safety and Health (division) enforces occupational safety and health standards and orders. Certain~~

~~violations of these standards and orders are crimes. Existing law also requires the division to report annually to the Legislature specified matters, including providing recommendations for legislation to improve the ability of the division to provide safety in employment.~~

~~This bill would also require the division to include in its report to the Legislature, recommendations to improve the ability of the division to maximize health outcomes in places of employment.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7401.1 is added to the Business and
2 Professions Code, to read:

3 7401.1. (a) The board shall not renew the license of an
4 establishment that provides nail care services if it is conducting
5 business in violation of Section 238 of the Labor Code.

6 (b) Before renewing the license of an establishment that provides
7 nail care services as defined in Section 7316, the board shall verify
8 with the Labor Commissioner whether that establishment is
9 conducting business in violation of Section 238 of the Labor Code.

10 (c) An establishment that provides nail care services may
11 demonstrate to the board that is not conducting business in
12 violation of Section 238 of the Labor Code by providing evidence
13 to the board.

14 SEC. 2. Section 7401.2 is added to the Business and Professions
15 Code, to read:

16 7401.2. The board shall not renew the establishment license
17 of an establishment that provides nail care services, as defined
18 under Section 7316, if the establishment and its employees have
19 not received the training required pursuant to Part 10.5
20 (commencing with Section 2268) of the Labor Code.

21 SEC. 3. Section 238.6 is added to the Labor Code, to read:

22 238.6. (a) If an employer is an establishment that offers nail
23 care services and is required to obtain a license from the State
24 Board of Barbering and Cosmetology pursuant to Chapter 10
25 (commencing with Section 7301) of Division 3 of the Business and
26 Professions Code is found to be conducting business in violation
27 of Section 238, the Labor Commissioner shall notify the State

1 *Board of Barbering and Cosmetology that the establishment is*
2 *conducting business in violation of Section 238.*

3 *(b) For the purposes of this section, “nail care services” means*
4 *the practice of cutting, trimming, polishing, coloring, tinting,*
5 *cleansing, manicuring, or pedicuring the nails of a person or*
6 *massaging, cleansing, or beautifying from the elbow to the*
7 *fingertips or the knee to the toes of a person.*

8 *SEC. 4. Part 10.5 (commencing with Section 2268) is added*
9 *to Division 2 of the Labor Code, to read:*

10
11 *PART 10.5. NAIL CARE ESTABLISHMENTS*
12

13 *2268. For the purposes of this part, the following terms shall*
14 *have the following meanings:*

15 *(a) “Division” means the Division of Labor Standards*
16 *Enforcement.*

17 *(b) “Establishment” means an establishment licensed under*
18 *Chapter 10 (commencing with Section 7301) of Division 3 of the*
19 *Business and Professions Code that offers nail care services.*

20 *(c) “License” means a license issued to an establishment under*
21 *Chapter 10 (commencing with Section 7301) of Division 3 of the*
22 *Business and Professions Code.*

23 *(d) “Licensee” means an employee of an establishment who is*
24 *licensed under Chapter 10 (commencing with Section 7301) of*
25 *Division 3 of the Business and Professions Code to perform nail*
26 *care services.*

27 *(e) “Nail care” means the practice of cutting, trimming,*
28 *polishing, coloring, tinting, cleansing, manicuring, or pedicuring*
29 *the nails of a person or massaging, cleansing, or beautifying from*
30 *the elbow to the fingertips or the knee to the toes of a person.*

31 *2268.1. (a) An establishment shall register with the division*
32 *pursuant to this part and receive the training required by this part*
33 *once every license renewal period. An establishment shall also*
34 *arrange for licensees employed at that establishment to receive*
35 *the required training from either the division under subdivision*
36 *(b) or from a nonprofit vendor under subdivision (c).*

37 *(b) (1) By June 1, 2017, the division shall provide training to*
38 *an establishment and licensees employed at that establishment*
39 *regarding laws pertaining to workplace rights and wage and hour*
40 *laws.*

1 (2) *The training shall include, but not be limited to:*

2 (A) *Misclassification of an employee as a contractor.*

3 (B) *Wage and hour laws, such as minimum wage, overtime*
4 *compensation, meal periods, and rest breaks.*

5 (C) *Protection for retaliation.*

6 (D) *Business expense reimbursement.*

7 (E) *Tip or gratuity distribution.*

8 (F) *How to report violations of the law.*

9 (3) *To the extent possible, the training shall be provided*
10 *separately to an establishment and licensees.*

11 (4) *The training shall be provided in a culturally competent and*
12 *linguistically appropriate manner for the demographic groups*
13 *that work in the nail care industry.*

14 (c) (1) *In lieu of providing training under subdivision (b), the*
15 *division may contract with an approved nonprofit vendor to provide*
16 *the training required by this section.*

17 (2) *The division shall consider all of the following when*
18 *approving a nonprofit vendor to provide the training required by*
19 *this section:*

20 (A) *The linguistic capabilities of the nonprofit vendor. The*
21 *nonprofit vendor shall have language capacity to conduct the*
22 *training in the languages of the demographic groups that work in*
23 *the nail care industry, including, but not limited to, Vietnamese.*

24 (B) *The nonprofit vendor shall have a demonstrated history of*
25 *providing culturally competent services to the demographic groups*
26 *that work in the nail care industry, including, but not limited to,*
27 *the Vietnamese community.*

28 (C) *The nonprofit vendor shall have familiarity with the laws*
29 *to be discussed in the training. The vendor may obtain this legal*
30 *expertise through other service providers, such as a nonprofit legal*
31 *service agency.*

32 (D) *Any other criteria deemed appropriate by the division.*

33 (3) *The nonprofit vendor shall not charge a fee to the attendees*
34 *of the training.*

35 2268.2. (a) *The division shall charge a fee to an establishment,*
36 *not to exceed the reasonable regulatory cost, for providing the*
37 *training under this part or for contracting out with an approved*
38 *nonprofit vendor to provide the training required under this part.*

39 (b) *The fee shall be deposited into the Nail Care Establishment*
40 *Training Fund, which is hereby created. The fee shall only be used*

1 *for the purposes of providing the training required pursuant to*
2 *this part and, notwithstanding Section 13340 of the Government*
3 *Code, is continuously appropriated without regard to fiscal year*
4 *solely for these purposes.*

5 SECTION 1. ~~Section 6330 of the Labor Code is amended to~~
6 ~~read:~~

7 ~~6330. The director shall prepare and submit to the Legislature,~~
8 ~~not later than March 1, an annual report on the division activities.~~
9 ~~The report shall include, but need not be limited to, the following~~
10 ~~information for the previous calendar year:~~

11 ~~(a) The amount of funds allocated and spent in enforcement,~~
12 ~~education and research, and administration by the division.~~

13 ~~(b) Total inspections made, and citations issued by the division.~~

14 ~~(c) The number of civil penalties assessed, total amount of fines~~
15 ~~collected and the number of appeals heard.~~

16 ~~(d) The number of contractors referred to the Contractor's State~~
17 ~~License Board for hearing, pursuant to Section 7109.5 of the~~
18 ~~Business and Professions Code, and the total number of these cases~~
19 ~~resulting in suspension or revocation of a license.~~

20 ~~(e) The report from the division prepared by the Bureau of~~
21 ~~Investigations for submission to the director pursuant to Section~~
22 ~~6315.3.~~

23 ~~(f) Recommendations for legislation which improves the ability~~
24 ~~of the division to provide safety and maximize health outcomes~~
25 ~~in places of employment.~~

26 ~~The report shall be made to the Speaker of the Assembly and~~
27 ~~the Chairman of the Rules Committee of the Senate, for assignment~~
28 ~~to the appropriate committee or committees for evaluation.~~